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No. 92-27

IN THE

Supreme Court of the United States

October Term, 1991

LEAMON THURMON GOULD,
Petitioner
v.
P. T. KRAKATAU STEEL,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Petitioner Leamon Thurmon Gould's ("Gould") presentation of the questions to be considered in this case does not fairly present the facts put before the district court and made part of the record of this lawsuit.

Specifically, in his first question, Gould asserts that respondent P. T. Krakatau Steel ("Krakatau") derived revenue "from its purposeful establishment of a market . . . in the United States, . . . " However, there is no evidence that Krakatau has created or has attempted to create a market in the United States. At most, there is evidence that representatives of Krakatau made two business-related visits to the United States to states other than Arkansas: one visit to San Francisco and the other to attend a business conference in New York.

In his second question, Gould writes that Krakatau "structured its business to avoid direct contacts with any particular state. . . . " There is nothing in the record to support this assertion.

Krakatau suggests that a fairer wording of the question for review by this Court would be the following:

> If a foreign manufacturer exports a product, aware that there is a possibility it may be used in the United States but not knowing nor having reason to know that it will be used in any particular state, and while being

used in Arkansas, that product causes someone injury, does the due process clause of the United States Constitution prohibit a district court from exercising personal jurisdiction over the foreign manufacturer in a diversity action where that foreign manufacturer has had no contact with that state?

RESPONDENT'S STATEMENT OF THE CASE

Gould originally sued Empire Steel Trading Company, Inc. ("Empire") a New York company, which had purchased wire rods from Krakatau in Indonesia, shipped them to the United States and, in turn, supplied wire rods to Gould's employer, Forbes Steel & Wire Corp. ("Forbes").[1] Gould voluntarily dismissed its complaint against Empire to take an immediate appeal of the dismissal of Krakatau from the case. Gould may refile against Empire.

Krakatau disputes Gould's characterization of the established facts of this case. Specifically, Krakatau disputes that there has been any showing of any concerted effort by Krakatau to establish a United States market. On the contrary, the evidence shows only few, sporadic and tangential contacts with the United States market. Those are the following:

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[1] Krakatau would also point out that there is no proof in the record that the wire rods purchased from Krakatau were the ones involved in the accident.

> (1) Krakatau representatives made three visits to the United States to states other than Arkansas: in June of 1987, Krakatau's General Manager of Marketing met with one or more representatives of Empire in San Francisco, California. In the following month, Soetoro Mangoensoewargo, Marketing Director of the company, met with Empire people in New York for a social visit. In June 1988, Mr. T. Aribowo, Krakatau's President, attended a general steel conference in New York.
>
> (2) In August 1986, Krakatau placed an advertisement in the *Metal Bulletin*, published in the United Kingdom and distributed worldwide, including in the United States. In that advertisement, Krakatau stated that its products complied with international standards, which included the 'ASTM' [American Society for the Testing of Metals]

In his Statement of the Case, Gould concedes correctly that: "There has been and can be no showing that Krakatau was aware that Arkansas was the state of destination for this shipment [of wire rods]." Moreover, Gould must also concede that there has been no showing that Krakatau affirmatively sought to establish a market for its products in the United States.

ARGUMENT: REASONS FOR DENYING THE WRIT

There Is No Jurisdiction Under Rule 10 for Granting the Writ.

Krakatau, pursuant to Rule 10 of the Supreme Court Rules, respectfully suggests that the Petition for Writ of Certiorari should be denied. The decision of the United States Court of Appeals for the Eighth Circuit is not in conflict with the decision of any other United States court of appeals nor any state court of last resort. Rather, the Eighth Circuit's opinion is completely in line with both this Court's and other circuit courts' decisions. Based on controlling precedent, such as *Asahi Metal Industry Co. v. Superior Court of Calif.*, 480 U.S. 102 (1987); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), there could not have been a clearer case against the imposition of jurisdiction over Krakatau. The Eighth Circuit could only affirm the district court's decision that it lacked personal jurisdiction over Krakatau, since Krakatau, as was conceded by Gould, had had *no* contact with the State of Arkansas.

The cases cited by Gould as being in conflict "in principle" with the Eighth Circuit's ruling are all factually distinguishable in a meaningful way from this case. Thus, there is no conflict. The cases cited by Gould, including *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717 (Minn. 1985), *cert. denied*, 474 U.S. 1006 (1985), involved foreign manu-

facturers with exclusive American distributors which did business or had contacts in the forum state. That is not the case here. The point of sale between Krakatau and Empire was F.O.B. Port Cigading, Indonesia. Krakatau had knowledge gained from shipping documents that the product might end up in the United States. It had neither knowledge nor reason to know that any of its steel coils would end up in Arkansas. As Gould concedes, Krakatau never targeted Arkansas as a market and may be wholly ignorant of the state's existence. At most, Krakatau placed its product into the international marketplace of commerce in Indonesia.

Moreover, the facts do not support Gould's assertion that Krakatau affirmatively and purposefully sought a United States market for its products. In any case, the relevant inquiry under decisions handed down by this Court is Krakatau's relationship (or the lack thereof) with the forum state, not with the United States.

CONCLUSION

Respondent P. T. Krakatau Steel respectfully requests that the petition for writ of certiorari of Leamon Thurmon Gould to the United States Court of Appeals for the Eighth Circuit be denied.

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